

110TH CONGRESS
1ST SESSION

H. CON. RES. 160

Regarding the endorsement of U.S. citizens' claims for payment by Chinese Government of defaulted Chinese bonds.

IN THE HOUSE OF REPRESENTATIVES

MAY 24, 2007

Mr. LINCOLN DAVIS of Tennessee submitted the following concurrent resolution; which was referred to the Committee on Financial Services

CONCURRENT RESOLUTION

Regarding the endorsement of U.S. citizens' claims for payment by Chinese Government of defaulted Chinese bonds.

Whereas China issued full faith and credit long term (e.g. 47 years) sovereign government bonds from 1913 through 1938, with the following language printed on the face of each of these bonds and the original loan agreement, "These obligations are intended to be binding upon the Government of China and any successor government", and were sold to investors based upon these representations;

Whereas the established conventions of international law with respect to the obligation of a successor government to honor the full faith and credit sovereign obligations of a predecessor government is a fundamental tenet of international trade and commerce;

Whereas on March 31, 1921, the New York Times advertised the sale and purchase of these bonds on behalf of Cowen & Company to United States citizens;

Whereas on April 20, 1921, the New York Times published a display ad advertising these bonds for sale to United States citizens on behalf of Pynchon & Company, a registered member of the New York Stock Exchange;

Whereas on April 26, 1921, the New York Times advertised the sale and purchase of these bonds to United States citizens on behalf of Bull & Eldredge, a registered member of the New York Stock Exchange;

Whereas on May 22, 1921, the New York Times published an advertisement for the sale and purchase of these bonds to United States citizens for Ernest Smith & Company-Dealers in Foreign Government Bonds;

Whereas on October 18, 1924, the New York Times published the “Bid and Asked quotes”, for these bonds;

Whereas on November 11, 1932, the New York Times published the price and yield of these bonds for the previous days trading;

Whereas China defaulted on all of its public debt in 1939;

Whereas the People’s Republic of China (in this resolution referred to as “PRC”) became the official government of China, assuming its assets as well as its liabilities in 1949;

Whereas in 1955, the People’s Republic of China issued an official communique from the Minister of Foreign Affairs and the Minister of Finance addressed to all Chinese embassies around the world advising that the PRC had not the ability to pay this debt burden (U.S. translation from Mandarin Chinese);

Whereas the People's Republic of China replaced the Republic of China in the United Nations as the officially recognized government of China on November 23, 1971, and was subsequently recognized as the government of all China;

Whereas in 1979, the Chinese Government negotiated a Treaty with the United States providing compensation to U.S. Nationals who suffered a taking of property by the government of the PRC. Because no positive action was taken as of the date of the Treaty by the government of the PRC, with respect to the debt, the bonds were excluded from the scope of the Treaty, (Title V of the International Claims Settlement Act does not provide any statutory authority for the Foreign Claims Settlement Commission to address takings prior to 1949, therefore, lacking authority to negotiate the settlement of the defaulted bonds of the PRC);

Whereas in 1983, the People's Republic of China, Minister of Foreign Affairs issued an official Aide Memoire to the United States Department of State asserting that the PRC should have no obligation to pay the debts and advising that they would hold the U.S. Department of State and the United States Government responsible should the PRC be required to honor this debt and demanded that the PRC be protected from suit in United States Courts on this issue citing a mandate of Sovereign Immunity Protection for the PRC, which has subsequently continued to be upheld in the United States court system;

Whereas the government of the People's Republic of China concluded a discriminatory settlement of these bonds with respect to British bondholders in 1987, and which ex-

cludes United States bondholders from participation. This is known as the 1987 China-Brit Treaty;

Whereas on May 24, 2000, the United States granted Permanent Normal Trade Status to the People's Republic of China;

Whereas on December 22, 2000, notices from the law firm of Stites & Harbison were submitted to the United States Securities and Exchange Commission (in this resolution referred to as "SEC"), the White House, United States Department of State and the Federal Trade Commission seeking their assistance in the collection efforts of China's defaulted sovereign debt;

Whereas on January 29, 2001, U.S. Senator Bill Frist sent written notice to the SEC expressing support of this collection effort and requesting the SEC to actively assist on this issue;

Whereas on June 13, 2001, the SEC, working jointly and collectively with the State Department, the National Security Council and the Senior Associate Counsel to the President recommended seeking the assistance of the Foreign Bondholders Protective Council (in this resolution referred to as "FBPC") to assist in the collection efforts of this claim. The FBPC was enacted under Presidential Executive Order in 1933 by President Franklin D. Roosevelt to assist U.S. citizens in collecting on foreign defaulted debt. The FBPC with the U.S. Government's endorsement has successfully settled over 40 bond settlements for U.S. citizens from defaulted bonds issued by foreign governments;

Whereas on August 16, 2001, the American Bondholders Foundation, LLC (in this resolution referred to as

“ABF”) was created to represent the consolidated efforts of bondholders holding defaulted sovereign obligations of the People’s Republic of China;

Whereas on February 5, 2002, the ABF through its legal representatives Stites & Harbison, PLLC made formal written demands to the PRC requesting fair settlement of these claims. Several subsequent notices have been sent since that time, all of which the PRC has continued to ignore and evade the issue;

Whereas on May 17, 2002, the United States Congress, initiated by Congressman Bart Gordon, sent written notice to President George W. Bush supporting the efforts of the ABF to receive a fair settlement from the PRC and requesting action by the Administration to hold the Chinese Government accountable to American citizens for a fair resolution of their claims as holders of defaulted Chinese Government bonds. This letter was endorsed by over 50 members of the United States House of Representatives;

Whereas on September 25, 2002, Congressman Walter Jones submitted H. Con. Res. 485 requesting the United States Government to take appropriate action to urge the PRC to provide for a fair resolution of the claims of United States citizens holding defaulted Chinese Government bonds. Congressman Walter Jones and several other Members of Congress held a press conference outside the Cannon House Office Building to announce the resolution. This resolution was assigned to the Committee on Financial Services and was endorsed and supported by Chairman Michael Oxley, however, was unable to be entered onto the calendar for hearings prior to the ending of the 107th Congress;

Whereas on February 27, 2003, Congressman Walter Jones re-submitted the previous Resolution H. Con. Res. 485, which then became H. Con. Res. 60. H. Con. Res. 60 was referred to the Committee on International Relations, Chairman Henry Hyde;

Whereas on June 17, 2003, Congressman Walter Jones issued a letter stating that under International Law, China is clearly obligated to pay American citizens. In Congressman Jones' letter, he encouraged the ABF to pursue other, non-legislative avenues of seeking redress and compensation for the bondholders. Mr. Jones wrote, "A possible tender of the valid full faith and credit obligations of the Chinese Government, which the People's Republic of China is obligated to accept under International Law as a means of cancellation of Iraq's existing external sovereign debt to the PRC, would reinforce accepted conventions of international trade and commerce as well as free Iraq from an otherwise oppressive debt burden. It would enable Iraq to conserve its economic resources for economic development and nation building, while possibly resulting in a measure of just compensation for U.S. bondholders. This avenue should be fully explored.";

Whereas on October 21, 2003, the Committee on International Relations, United States Congress, House of Representatives, Chairman Henry Hyde held formal hearings in the Rayburn House Office Building in Washington, DC entitled: Reassessing the U.S. Economic Relationship with China. Mrs. Jonna Bianco, President of the American Bondholders Foundation, was requested by the International Relations Committee to testify before the Committee. Ms. Bianco spoke about the activities of

the American Bondholders Foundation (ABF) representing the consolidated claims of U.S. citizens who are holders of sovereign bonds issued by the government of China and on which that government has defaulted and continues to evade payment. Ms. Bianco also presented the International Offset Structure enabling countries that have outstanding debts owed to the People's Republic of China to acquire these bonds discounted from the ABF and then utilize the bonds under full contractual value to extinguish such debts owed to the PRC;

Whereas on October 30, 2003, Senator Richard Shelby issued a letter endorsing the ABF's International Offset Structure. Other Members of the House and Senate have issued letters endorsing the same, including the Chairman of the International Relations Committee, Chairman Henry Hyde;

Whereas in September 2005, the World Bank hosted a special luncheon and invited heads of banks and finance ministers to meet with the ABF to begin communications working towards reducing foreign governments' debts owed to the PRC through the International Offset Structure presented by the ABF;

Whereas from June 22–October 31, 2006, Members of the United States Congress issued multiple letters endorsing the ABF's Offset Structures and supported any entity, whether government or private, to acquire these defaulted bonds discounted from the ABF then utilizing them under full contractual value to extinguish their debts owed to the PRC;

Whereas in 2006, the People's Republic of China officially continued to assert its position mandating sovereign immunity protections as evidenced in the case of Marvin

Morris v. the People's Republic of China in the United States District Court for the Southern District of New York, upon which the courts granted;

Whereas in May 2007, it is estimated that American companies are losing 250 to 300 billion dollars in capital due to China's intellectual property thefts;

Whereas participation in the globalized economy requires nations affirm their international trade and treaty obligations through concrete actions, such as those associated with the World Trade Organization (in this resolution referred to as "WTO"). This was not only the expectation but the clear pre-condition of Congressional support of the People's Republic of China's admission to the WTO. Continuing to monitor China's actions to adhere to international trade and investment laws and practices is a natural oversight responsibility of Congress. The PRC's recognition and settlement of defaulted obligations is a litmus test of their overall good economic intentions. The initiative of the ABF in taking on the settlement of the defaulted bonds, pursued in a manner consistent with recognized international standards, is helping to reinforce the multilateral system where nations trade and invest globally. Without effective enforcement of accepted norms of international trade and commerce, the global financial system is placed in jeopardy;

Whereas the PRC continues to have open and unfettered access to all U.S. capital markets while at the same time continuing its practices of exclusionary settlement, discriminatory payments, selective default, and rejection of the successor government doctrine of settled international law; and

Whereas to preserve the integrity of public debt contracts and enhance financial markets discipline and transparency for all participants, and consistent with the terms and conditions established with the People's Republic of China's entry into the World Trade Organization, specifically the PRC's acknowledgment and acceptance to be a financially responsible trading partner and to be economically responsible; and with substantial evidence confirming that the PRC has not complied with the terms and conditions with accepted conventions of international law including the terms and conditions of the aforementioned: Now, therefore, be it

1 *Resolved by the House of Representatives (the Senate*
 2 *concurring)*, That Congress hereby recommends that the
 3 People's Republic of China be denied access to all U.S.
 4 capital markets until such time as the PRC fully complies
 5 with the terms and conditions of the WTO Agreement and
 6 fully honors repayment of its outstanding defaulted public
 7 debts owed to United States citizens consistent with the
 8 efforts of the American Bondholders Foundation.

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